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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Jack Neuman, ) No. CV 08-342-TUC-FRZ (HCE)  
10 Plaintiff, ) **ORDER**  
11 vs. )  
12 John Potter, Postmaster General United )  
13 States Postal Service, )  
14 Defendant. )  
15 \_\_\_\_\_

16  
17 Plaintiff Jack Neuman filed the *pro se* Complaint in this action alleging violations of  
18 Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e, *et seq.*, based on  
19 race and religion, and a violation of the Age Discrimination in Employment Act, 29 U.S.C.  
20 § 633a, arising from his termination from employment as Plant Manager at the Tucson Mail  
21 Processing Plant of the United States Postal Service. The Complaint also raises allegations  
22 of retaliation.

23 This matter was referred to the United States Magistrate Judge for all pretrial  
24 proceedings and report and recommendation in accordance with the provisions of 28 U.S.C.  
25 § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2, Rules of Practice of the United States District  
26 Court for the District of Arizona.

27 Before the Court for consideration is the Report and Recommendation of Magistrate  
28 Judge Hector C. Estrada, filed August 17, 2009, recommending that the District Court, after

1 its independent review of the record herein, grant Defendant's Partial Motion to Dismiss to  
2 the extent that the Plaintiff's Title VII claims of discrimination based on race and religion  
3 be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of  
4 jurisdiction and that the remainder of Defendant's Partial Motion to Dismiss, addressing  
5 Plaintiff's claims of age discrimination, filed pursuant to Fed.R.Civ.P. 12(b)(6), be denied  
6 without prejudice with leave to refile as a motion for summary judgment.<sup>1</sup>

7 The parties were given notice that, pursuant to 28 U.S.C. §636(b), any party may serve  
8 and file written objections within ten days after being served with a copy of this Report and  
9 Recommendation. No objections were filed.


10 The Court, having made an independent review of the record herein, including the  
11 factual analysis under the relevant legal standards of review, as set forth in the Report and  
12 Recommendation, agrees with the findings of the Magistrate Judge and orders as follows:

13 **IT IS ORDERED** that Magistrate Judge Estrada's Report and Recommendation  
14 [Doc. #18] is hereby **ACCEPTED** and **ADOPTED** as the findings of fact and conclusions  
15 of law by this Court;

16 **IT IS FURTHER ORDERED** that Defendant's Partial Motion to Dismiss as to  
17 Plaintiff's claims of discrimination based on race and religion, [Doc. # 6] is **GRANTED**;

18 **IT IS FURTHER ORDERED** that this matter is referred back to Magistrate Judge  
19 Estrada, pursuant to 28 U.S.C. § 636(b)(1) and LRCiv 72.1 and LRCiv 72.2, to determine  
20 whether Plaintiff has any remaining claim(s) of retaliation or whether judgment should be  
21 entered in favor of the Defendant.

22  
23 DATED this 29<sup>th</sup> day of September, 2009.

24   
25 FRANK R. ZAPATA  
26 United States District Judge

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27 <sup>1</sup>Pursuant to the stipulation of the parties to dismiss Plaintiff's age discrimination  
28 claim, this recommendation is moot.

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